

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO:1: 22-cv-24195-FAM

PREPARED FOOD PHOTOS, INC. f/k/a
ADLIFE MARKETING &
COMMUNICATIONS CO., INC.,
Plaintiff,

v.

ORIGINAL BIG TOMATO, LLC and
MYPIZZA TECHNOLOGIES, INC. d/b/a
SLICE,
Defendants.

_____ /

DEFENDANT, ORIGINAL BIG TOMATO, LLC'S,
ANSWER AND AFFIRMATIVE DEFENSES

Defendant, ORIGINAL BIG TOMATO, LLC (“OBT” or “Defendant”), respectfully answers the Complaint of Plaintiff, Prepared Food Photos, Inc. f/k/a Adlife Marketing & Communications Co., Inc., as follows:

THE PARTIES

1. Paragraph 1 is admitted for jurisdictional purposes only.
2. Paragraph 2 is admitted.
3. OBT is without knowledge as to the information set forth in Paragraph 3, therefore, it is denied.

JURISDICTION & VENUE

4. Paragraph 4 calls for a legal conclusion, therefore, it is denied.
5. Paragraph 5 calls for a legal conclusion, therefore, it is denied.
6. Paragraph 6 calls for a legal conclusion, therefore, it is denied.

7. Paragraph 7 calls for a legal conclusion, therefore, it is denied.

FACTS

8. OBT is without knowledge as to the allegations contained in Paragraph 8, therefore it is denied.

9. OBT is without knowledge as to the allegations contained in Paragraph 9, therefore it is denied.

10. OBT is without knowledge as to the allegations contained in Paragraph 10, therefore it is denied.

11. OBT is without knowledge as to the allegations contained in Paragraph 11, therefore it is denied.

12. OBT is without knowledge as to the allegations contained in Paragraph 12, therefore it is denied.

II. The Work At Issue In This Lawsuit.

13. OBT is without knowledge as to the allegations contained in Paragraph 13, therefore it is denied.

14. OBT is without knowledge as to the allegations contained in Paragraph 14, therefore it is denied.

15. OBT is without knowledge as to the allegations contained in Paragraph 15, therefore it is denied.

III. Defendant's Unlawful Activities.

16. OBT only operates one location in Pinecrest, Florida. As such, the allegations contained in Paragraph 16 are denied.

17. OBT admits that it does own and/or manage the website and social media pages referenced in Paragraph 17, but has not updated its website in years, posted on Facebook since 2019, or posted on Instagram since 2020. As such, the remainder of the allegations contained in Paragraph 17 are denied.

18. OBT admits that Slice allows pizzeria's like OBT to advertise its services for purchase and delivery, similar to the services offered by platforms like Uber Eats or Door Dash. OBT is without knowledge as to the remainder of the allegations contained in Paragraph 18, therefore, they are denied.

19. OBT is without knowledge as to the allegations contained in Paragraph 19, therefore, they are denied.

20. OBT is without knowledge as to the allegations contained in Paragraph 20, therefore, they are denied.

21. OBT is without knowledge as to the allegations contained in Paragraph 21, therefore, they are denied.

22. OBT is without knowledge as to the allegations contained in Paragraph 22, therefore, they are denied.

23. OBT is without knowledge as to the allegations contained in Paragraph 23, therefore, they are denied.

24. OBT is without knowledge as to the allegations contained in Paragraph 24, therefore, they are denied.

25. Paragraph 25 is denied.

26. OBT is without knowledge as to the allegations contained in Paragraph 26, therefore, they are denied.

27. OBT is without knowledge as to the allegations contained in Paragraph 27, therefore, they are denied.

Count I – Copyright Infringement

(Slice)

28. OBT integrates its responses to Paragraphs 1 through 27 above as though they are set forth fully herein.

29. OBT denies the allegations set forth in Paragraph 29.

30. OBT denies the allegations set forth in Paragraph 30.

31. OBT is without knowledge as to the allegations set forth in Paragraph 31, therefore, it is denied.

32. OBT is without knowledge as to the allegations set forth in Paragraph 32, therefore, it is denied.

33. OBT is without knowledge as to the allegations set forth in Paragraph 33, therefore, it is denied.

34. OBT is without knowledge as to the allegations set forth in Paragraph 34, therefore, it is denied.

35. Paragraph 35 calls for a legal conclusion, therefore, it is denied.

36. Paragraph 36 calls for a legal conclusion, therefore, it is denied.

37. OBT is without knowledge as to the allegations set forth in Paragraph 37, therefore, it is denied.

38. Paragraph 38 is denied.

39. OBT is without knowledge as to the allegations set forth in Paragraph 39, therefore, it is denied.

40. OBT is without knowledge as to the allegations set forth in Paragraph 40, therefore, it is denied.

41. OBT is without knowledge as to the allegations set forth in Paragraph 41, therefore, it is denied.

42. Paragraph 42 calls for a legal conclusion, therefore, it is denied.

43. Paragraph 43 calls for a legal conclusion, therefore, it is denied.

44. Paragraph 44 calls for a legal conclusion, therefore, it is denied.

45. Paragraph 45 calls for a legal conclusion, therefore, it is denied.

Count II – Copyright Infringement

(Original Big Tomato)

46. OBT integrates its responses to Paragraphs 1 through 27 above as though they are set forth fully herein.

47. Paragraph 47 is denied.

48. OBT is without knowledge as to the allegations set forth in Paragraph 48, therefore, it is denied.

49. Paragraph 49 is denied.

50. Paragraph 50 is denied.

51. Paragraph 51 is denied.

52. Paragraph 52 is denied.

53. Paragraph 53 calls for a legal conclusion, therefore, it is denied.

54. Paragraph 54 calls for a legal conclusion, therefore, it is denied.

55. Paragraph 55 is denied.

56. Paragraph 56 is denied.

57. Paragraph 57 is denied.

58. Paragraph 58 calls for a legal conclusion, therefore, it is denied.

59. Paragraph 59 calls for a legal conclusion, therefore, it is denied.

60. Paragraph 60 calls for a legal conclusion, therefore, it is denied.

61. Paragraph 61 calls for a legal conclusion, therefore, it is denied.

Any allegations not specifically admitted above in Paragraphs 1 through 61 are denied.

JURY TRIAL REQUEST

OBT requests a trial by jury for all issues so triable.

AFFIRMATIVE DEFENSES

1st Affirmative Defense

Plaintiff has failed to state a claim upon which relief may be granted.

2nd Affirmative Defense

Plaintiff has sustained no harm, irreparable or otherwise, due to any action by Defendant.

3rd Affirmative Defense

Plaintiff's claims fail for the work's lack of copyrightability.

4th Affirmative Defense

Plaintiff's demand related to its licensing fee is not the fair market value of the Work.

5th Affirmative Defense

Plaintiff's claims fail because the work at issue is based solely on an expression that flows from an idea.

6th Affirmative Defense

Plaintiff's claims fail because, to the extent that OBT infringed, its use was de minimus.

7th Affirmative Defense

To the extent that OBT is found to have infringed on Plaintiff's works, such infringement was not willful, and was unintentional.

8th Affirmative Defense

To the extent that Plaintiff's works are found to be copyrightable, it's claims are barred by the doctrine of laches.

9th Affirmative Defense

OBT is entitled to attorneys' fees under the Copyright Act because Plaintiff's claims are objectively unreasonable.

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2023, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, which will electronically serve all counsels of record.

By: /s/ Michelle K. Suarez, Esq.

Michelle K. Suarez, Esq.

Florida Bar No.: 104826

Counsel for Original Big Tomato, LLC.

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